

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	No. 98-cr-40002-JPG
)	
DEWAYNE C. ANTHONY,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter comes before the Court on defendant DeWayne C. Anthony's motion for leave to appeal in forma pauperis (Doc. 316) from the Court's order dismissing for lack of jurisdiction his *pro se* motions for a reduction of his criminal sentence pursuant to 18 U.S.C. § 3582(c)(2) and United States Sentencing Guidelines Manual § 1B1.10 (Docs. 282 & 287).

A federal court may permit a party to proceed on appeal without full pre-payment of fees provided the party is indigent and the appeal is taken in good faith. 28 U.S.C. § 1915(a)(1) & (3); Fed. R. App. P. 24(a)(3). A frivolous appeal cannot be made in good faith. *Lee v. Clinton*, 209 F.3d 1025, 1026-27 (7th Cir. 2000). The test for determining if an appeal is in good faith or not frivolous is whether any of the legal points are reasonably arguable on their merits. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989) (citing *Anders v. California*, 386 U.S. 738 (1967)); *Walker v. O'Brien*, 216 F.3d 626, 632 (7th Cir. 2000).

Anthony was sentenced based on an offense level determined by his career offender status, not his relevant conduct. His guideline range was not lowered by a subsequent amendment to the guidelines. In light of the Seventh Circuit's ruling in *United States v. Forman*, 553 F.3d 585, 589 (7th Cir.), *cert. denied*, 129 S. Ct. 2817 (2009), any argument that this Court has jurisdiction to decide Anthony's motion is frivolous. Therefore, the Court **CERTIFIES** that this appeal is not taken in good

faith and accordingly **DENIES** the motion for leave to proceed on appeal *in forma pauperis* (Doc. 316).

IT IS SO ORDERED.

Dated: February 1, 2010

s/ J. Phil Gilbert
J. PHIL GILBERT
U.S. DISTRICT JUDGE